

AMENDED IN ASSEMBLY AUGUST 28, 2003

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JULY 1, 2003

AMENDED IN SENATE MAY 15, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 6, 2003

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**SENATE BILL**

**No. 122**

**Introduced by Senator Escutia**

*(Principal coauthor: Assembly Member Corbett)*

February 4, 2003

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An act to add Sections 17204.6, 17204.7, 17204.8, and 17204.9 to the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Escutia. Private enforcement actions.

Existing law provides remedies for unfair competition that may be enforced by a governmental agency, including the district attorney, or by a private party acting for the interests of itself, its members, or the general public.

This bill would require, subject to specified exceptions, the court to review and approve ~~attorney's fees in~~ *a settlement or compromise of* an unfair competition action brought or proposed to be brought by a private party on behalf of the general public. The bill would also require that the plaintiff in those actions submit a copy of the complaint to the State Bar of California. The bill would specify certain equitable remedies applicable to all unfair competition actions and would set

forth principles for joining these actions. *The bill would require a private party seeking specified remedies to submit a copy of the proposed judgment terms to the Attorney General and would require that office to post that information on the Internet.* The bill would make its provisions contingent upon AB 95 being enacted and becoming effective on or before January 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17204.6 is added to the Business and  
2 Professions Code, to read:

3 17204.6. (a) ~~(1)~~ *At the time of filing a private cause of action*  
4 *under this chapter on behalf of the general public, the plaintiff*  
5 *shall notify the State Bar of California and submit a copy of the*  
6 *complaint to it. An attorney who fails to comply with this*  
7 *subdivision is subject to disciplinary action by the State Bar of*  
8 *California.*

9 (b) (1) A court shall review and approve any settlement or  
10 compromise, including any agreement, express or implied,  
11 regarding the payment of attorney's fees proposed to be paid in  
12 connection with a private action or a private cause of action  
13 brought, or proposed to be brought, under this chapter on behalf  
14 of the general public. The request to review and approve the fees  
15 settlement or compromise shall be made upon noticed motion. The  
16 court shall approve an award of attorney's fees for a plaintiff who  
17 prevails in the action against one or more defendants if an award  
18 of attorney's fees is authorized by a statute or if the award satisfies  
19 the requirements of Section 1021.5 of the Code of Civil Procedure.

20 ~~(2) (A) When any attorney's fees are proposed to be paid in~~  
21 ~~compromise or settlement the settlement or compromise unless~~  
22 ~~based on the evidence, briefing, and information submitted, it~~  
23 ~~determines that the disposition of the action is unfair or fails to~~  
24 ~~reasonably protect the interests of the general public under Section~~  
25 ~~17200. Any attorney's fees or costs awarded by the court shall be~~  
26 ~~consistent with applicable law.~~

27 (2) (A) When any settlement or compromise of a private action  
28 or a private cause of action on behalf of the general public is  
29 proposed to be brought under this chapter on behalf of the general

~~public that has not~~ *but has not yet* been filed with the court, the potential plaintiff shall file and serve on all parties the following:

(i) A complaint ~~itled~~ *entitled* “Complaint re: Settlement of an Action under Section 17200 of the Business and Professions Code” describing the cause of action proposed to be brought under this chapter, *which shall be filed with a first paper filing fee pursuant to Section 26820.4 of the Government Code.*

(ii) A special motion for review and approval of the proposed fees.

(B) A potential defendant who is a party to the compromise or settlement is not required to file an answer to the complaint but may file a response to the special motion upon payment of a motion filing fee pursuant to subdivision (a) of Section 26830 of the Government Code.

(C) Upon hearing the motion, the court shall approve ~~an award of attorney’s fees to the potential plaintiff against one or more of the potential defendants if an award of attorney’s fees is authorized by a statute or if the award satisfies the requirements of Section 1021.5 of the Code of Civil Procedure.~~ *the settlement or compromise unless based on the evidence, briefing, and information submitted, it determines that the disposition of the action is unfair or fails to reasonably protect the interests of the general public under Section 17200.*

(3) No ~~attorney’s fees~~ *settlement moneys* may be paid by a defendant or a potential defendant in compromise or settlement of ~~an~~ *a private* action or proposed action brought on behalf of the general public under this chapter unless the ~~fees have~~ *settlement or compromise has* been reviewed and approved pursuant to a motion under paragraph (1) or (2). If not approved by the court, an agreement to pay any ~~attorney’s fees~~ *moneys* is void and unenforceable.

(4) The court shall review in camera any information submitted by the plaintiff or the potential plaintiff to support the ~~award of attorney’s fees~~ *settlement or compromise* pursuant to this section if the information is protected by the attorney-client or attorney work product privilege.

~~(5) An attorney who receives attorney’s fees in an action or proposed action under this chapter without submitting the proposed attorney’s fees for review and approval by the court~~

1 pursuant to paragraph (1) or (2) is subject to disciplinary action by  
2 the State Bar of California.

3 ~~(b) At the time of filing a private cause of action under this~~  
4 ~~chapter on behalf of the general public, the plaintiff shall notify~~  
5 ~~and submit a copy of the complaint to the State Bar of California.~~  
6 ~~Any attorney who fails to comply with this subdivision is subject~~  
7 ~~to disciplinary action by the State Bar of California.~~

8 *(5) Any attorney representing a party who enters into a*  
9 *settlement or compromise or who receives settlement moneys,*  
10 *including attorney's fees, in a private action or proposed private*  
11 *action under this chapter on behalf of the general public without*  
12 *submitting the proposed settlement or compromise, including*  
13 *attorney's fees, for review and approval by the court pursuant to*  
14 *paragraph (1) or (2), is subject to disciplinary action by the State*  
15 *Bar of California.*

16 (c) Subdivision ~~(a)~~ (b) shall not require a court to review and  
17 approve an award of attorney's fees when the fees are agreed upon  
18 by the parties as part of the compromise or settlement of an *apply*  
19 *if the action or cause of action or proposed action is brought by a*  
20 *labor organization or by a representative of a labor organization or*  
21 *by a joint labor management committee established pursuant to the*  
22 *federal Labor Management Corporation Act of 1978 (29 U.S.C.*  
23 *Sec. 175a) or by an established employment or civil rights*  
24 *organization on behalf of employees or the general public. For*  
25 *purposes of this section, an employment or civil rights*  
26 *organization shall be in existence for a minimum of five years in*  
27 *order to qualify for an exemption and have as one of its purposes*  
28 *the vindication of labor, civil, constitutional or human rights.*

29 SEC. 2. Section 17204.7 is added to the Business and  
30 Professions Code, to read:

31 ~~17204.7. (a) In addition to the relief authorized by Section~~  
32 ~~17203, if~~

33 *17204.7. (a) If the court finds that a defendant has engaged*  
34 *in an unlawful, unfair, or fraudulent business act or practice in*  
35 *violation of this chapter and that the defendant has derived profits*  
36 *or ill gotten gains from that act or practice, the court may order any*  
37 *appropriate equitable relief to remedy the act or practice. A In*  
38 *addition, a court shall assure that any monetary relief in excess of*  
39 *the restitution paid by a defendant amounts paid to the plaintiffs*  
40 *or to affected members of the general public by a defendant, if any,*

1 shall be distributed as a ~~fluid recovery or cy pres award or fluid~~  
2 ~~recovery pursuant to this section to provide substantial benefit,~~  
3 ~~pursuant to paragraph (2) of subdivision (b), to Californians.~~

4 (b) (1) Prior to the entry of any judgment or order for relief  
5 pursuant to this section, the court shall determine the total amount  
6 of monetary relief payable as the result of the defendant's  
7 unlawful, unfair, or fraudulent business act or practice. The court  
8 shall set a date when the parties shall report to the court the total  
9 amount actually paid ~~in restitution to~~ *to those members of the*  
10 ~~public. After identified and located as being affected by the act or~~  
11 ~~practice, if any.~~

12 (2) After the report is received, the court shall amend the  
13 judgment to direct the defendant to pay the ~~sum~~ *remaining balance*  
14 ~~of the unpaid residue to nonprofit organizations or foundations ill~~  
15 ~~gotten gains to a nonprofit organization or foundation to support~~  
16 ~~projects consistent with the objectives and purposes of the~~  
17 ~~underlying action or to promote justice for all. The court shall~~  
18 ~~ensure that this distribution provides substantial benefit to~~  
19 ~~California consumers. justice for all; or to a court-approved fund~~  
20 ~~appropriate to the circumstances of the particular action; or, if~~  
21 ~~neither of those options is available, to the State of California.~~

22 (3) For purposes of this section only, and in connection with a  
23 private action or private cause of action brought on behalf of the  
24 general public under this chapter, a court shall not order any  
25 monetary relief in excess of monetary restitution against a small  
26 business. For this purpose, a "small business" is a business that  
27 has fewer than 10 employees or independent contractors and  
28 average annual gross receipts of less than five hundred thousand  
29 dollars (\$500,000). Nothing in this paragraph is intended to limit  
30 the ability of the court, in the exercise of its equitable powers, to  
31 issue injunctive relief or order restitution against a small business.  
32 This paragraph does not apply to any cause of action that alleges  
33 a violation of any law or regulation affecting civil rights, wages,  
34 or working hours or conditions.

35 (c) (1) A private plaintiff who is seeking cy pres or fluid  
36 recovery shall at least 30 days before the date of the final report  
37 and judgment by the court, as described in paragraph (2) of  
38 subdivision (b), submit to the Attorney General a copy, including  
39 a copy in electronic form, of the proposed terms of the judgment,  
40 including all stipulations and associated agreements between the

1 parties, together with the notice of the time and place set for  
2 hearing on the entry of the judgment. If the proposed judgment is  
3 materially amended before entry of judgment, the private plaintiff  
4 shall promptly provide the Attorney General with an amended  
5 copy.

6 (2) The Attorney General shall make the proposed terms of the  
7 judgment publicly available on the Internet for a period not to  
8 exceed 45 days from the date of its receipt of the judgment. The  
9 posting of information required of the Attorney General pursuant  
10 to this subdivision is administrative in nature, and imposes no  
11 other duty on that office.

12 (3) The receipt of information pursuant to paragraph (1) does  
13 not constitute notice affecting the right of the Attorney General to  
14 take any other action within its authority at any time.

15 (d) Notwithstanding any other provision of law, Section 17208  
16 applies to this section.

17 SEC. 3. Section 17204.8 is added to the Business and  
18 Professions Code, to read:

19 17204.8. (a) All persons may be joined in one action as  
20 defendants if there is asserted against them:

21 (1) Any right to relief jointly, severally, or in the alternative, in  
22 respect of or arising out of the same transaction, occurrence, or  
23 series of transactions or occurrences and if any question of law or  
24 fact common to all these persons will arise in the action; or

25 (2) A claim, right, or interest adverse to them in the property or  
26 controversy which is the subject of the action.

27 (b) It is not necessary that each defendant be interested as to  
28 every cause of action or as to all relief prayed for. Judgment may  
29 be given against one or more defendants according to their  
30 respective liabilities.

31 (c) Where the plaintiff is in doubt as to the person from whom  
32 he or she is entitled to redress, he or she may join two or more  
33 defendants, with the intent that the question as to which, if any, of  
34 the defendants is liable, and to what extent, may be determined  
35 between the parties.

36 (d) The fact that individual defendants who are not associates  
37 or affiliates of each other are engaged in the same or similar types  
38 of businesses and are alleged to have violated the same or similar  
39 laws or regulations shall not, in itself, constitute a basis for joinder  
40 under this chapter.



1 SEC. 4. Section 17204.9 is added to the Business and  
2 Professions Code, to read:

3 17204.9. (a) A court in reviewing an action brought pursuant  
4 to this chapter may, in the interests of justice, order consolidation  
5 or coordination of actions.

6 (b) *In order to prevent double recovery, a court may, in the*  
7 *exercise of its equitable powers, allow any party to present*  
8 *information about a prior action against the same defendant and*  
9 *allow a set off against claims in a later action against that*  
10 *defendant, if the later action is based on the same facts, occurring*  
11 *at the same time, and raises the same issues as the prior action.*

12 SEC. 5. The provisions of subdivision (d) of Section 17204.8  
13 of the Business and Professions Code added by this act do not  
14 constitute a change in, but are declaratory of, existing law.

15 SEC. 6. This act shall become operative only if Assembly Bill  
16 95 of the 2003–04 Regular Session is enacted and becomes  
17 effective on or before January 1, 2004.

